

UNITED STATES TAX COURT

WASHINGTON, DC 20217

PETER KURETSKI AND KATHLEEN
KURETSKI,

Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 18545-10L.

ORDER

In our opinion in this collection case of September 11, 2012, T.C. Memo. 2012-262, we ruled that there was no meeting of the minds sufficient to form a valid installment agreement, and so the Appeals Officer had not abused her discretion. We also decided that petitioners had not shown reasonable cause and lack of willful neglect sufficient to avoid the addition to tax for failure to pay, but that respondent had failed to show that petitioners were liable for the estimated tax addition to tax. Petitioners have now filed a Motion To Vacate Decision (motion to vacate), a Motion for Reconsideration, and a Memorandum of Law in support of their Motion for Reconsideration. Respondent has filed responses opposing both motions. In addition, petitioners have filed a Reply to respondent's response to petitioners' motion to vacate, and a Supplement to their motion to vacate. Respondent has filed a Motion for Leave to File a Surreply to petitioners' reply to respondent's response to petitioners' motion to vacate.

In their motion to vacate, petitioners contend that I.R.C. section 7443(f), which provides for Presidential removal of Tax Court judges under certain circumstances, is unconstitutional under Article III of the Constitution. However, petitioners do not question our jurisdiction on that ground, which they could do at any time, Henderson ex. rel. Henderson v. Shinseki, ___ U.S. ___, ___, 131 S.Ct. 1197, 1202 (2011). Instead petitioners ask that if we agree with their contention, we first determine that section 7443(f) is unconstitutional and then, free of "the

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improper threat of interbranch removal” from office, decide this case again on the record and previous briefing. They also ask that we consider all of the arguments in their motion for reconsideration as if made in their opening brief, rather than the record as it was submitted under the standard applicable to motions for reconsideration. It remains unclear how this remedy would address or solve the Constitutional question raised by petitioners.¹

In their motion for reconsideration, petitioners argue that there was an installment agreement authorized by respondent at the meeting of June 28, 2011. Petitioners also argue in their motion for reconsideration that the IRS Office of Appeals failed to properly implement the determination of the Appeals Officer that the failure to pay addition to tax should be abated. Petitioners do not seek to present additional evidence with their motion for reconsideration.

Motions to reconsider and to vacate are governed by Tax Court Rules 161 and 162, respectively. Those rules establish filing deadlines but provide no guidance on the circumstances under which the Court should grant or deny such motions. In the absence of more specific guidance, we look to case law and the Federal Rules of Civil Procedure. See Tax Court Rule 1(b). The decision to grant motions to reconsider and to vacate lies within the discretion of the Court. Estate of Quick v. Commissioner, 110 T.C. 440, 441 (1998) (motion to reconsider); Kun v. Commissioner, T.C. Memo. 2004-273 (motion to vacate).

Motions to vacate are generally not granted absent a showing of unusual circumstances or substantial error, e.g., mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, fraud, or other reason justifying relief. See, e.g., Fed.R.Civ.P. 60(b); Brannon’s of Shawnee, Inc. v. Commissioner, 69 T.C. 999, 1001 (1978). Motions for reconsideration are also not generally granted in

¹The Court has an independent obligation to determine whether it has jurisdiction over a case, and the parties cannot stipulate jurisdiction nor can they waive jurisdictional defects. Arbaugh v. Y & H Corp., 546 U.S. 500, 514 (2006); Charlotte’s Office Boutique, Inc. v. Commissioner, 121 T.C. 89, 102 (2003), aff’d, 425 F.3d 1203 (9th Cir. 2005). A determination by this Court that section 7443(f) is unconstitutional would not be conclusive of that issue. If there is a constitutional problem, such a ruling would not make a second determination of the case on its merits any freer from potential prejudice or duress than our first determination.

the absence of unusual circumstances or substantial error. Estate of Quick v. Commissioner, supra at 441-442. Motions to reconsider are generally "intended to correct substantial errors of fact or law and allow the introduction of newly discovered evidence that the moving party could not have introduced by the exercise of due diligence in the prior proceeding." Knudsen v. Commissioner, 131 T.C. 185, 185 (2008). "Reconsideration is not the appropriate forum for rehashing previously rejected legal arguments or tendering new legal theories to reach the end result desired by the moving party." Estate of Quick v. Commissioner, supra at 441-442. On motions for reconsideration, we do not, except under extraordinary circumstances, address any new issue which a party could have addressed but failed to address prior to the Court's deciding the case. Stoody v. Commissioner, 67 T.C. 643, 644 (1977); Lowry v. Commissioner, T.C. Memo 2004-10, aff'd in unpublished opinion, 171 Fed. Appx. 6 (9th Cir. 2006); Gordon v. Commissioner, T.C. Memo 1997-422. Motions to vacate and to reconsider should be denied if they are based on an unexcused failure to raise an issue earlier. Koufman v. Commissioner, 69 T.C. 473, 476-477 (1977)

Petitioners' constitutional argument could have been raised before our decision was issued, but was not. Petitioners have failed to explain why they waited until after we issued our decision ruling against them to make that argument. We therefore decline to address it now. We also decline to address petitioners' other arguments, because they merely rehash arguments that petitioners raised before the decision was issued.

In light of the foregoing, we need not address any issues regarding petitioners' standing to raise the constitutional argument. Cf. Eastern Kentucky Welfare Rights Organization v. Simon, 426 U.S. 26 38 (1976) ("[W]hen a plaintiff's standing is brought into issue the relevant inquiry is whether, assuming justiciability of the claim, the plaintiff has shown an injury to himself that is likely to be redressed by a favorable decision." (emphasis added)).

Upon due consideration and for cause, it is

ORDERED that respondent's Motion for Leave to File Surreply to Petitioners' Reply to Respondent's Response to Petitioners' Motion To Vacate Decision is granted. It is further

ORDERED that the Clerk of the Court shall file respondent's Surreply to Petitioners' Reply to Respondent's Response to Petitioners' Motion to Vacate Decision, lodged February 13, 2013, as of the date of this Order. It is further

ORDERED that petitioners' Motion To Vacate Decision is denied. It is further

ORDERED that petitioners' Motion for Reconsideration is denied.

(Signed) Robert A. Wherry, Jr.
Judge

Dated: Washington, D.C.
March 4, 2013